



South Florida Water Management District

GOVERNING BOARD MEETING MINUTES

September 9, 2010

9:00 AM

District Headquarters - B-1 Auditorium

3301 Gun Club Road

West Palm Beach, FL 33406

Members Present:

Sandy Batchelor

Eric Buermann, Chair

Joe Collins

Charles Dauray

Shannon Estenoz

Jerry Montgomery

Kevin Powers

Glenn Waldman

1. Call to Order - Eric Buermann, Chairman, Governing Board

Chair Buermann called the meeting to order at 9:03 a.m.

Chair Buermann acknowledged the anniversary of September 11th. He requested a moment of silence to remember the victims, their families as well as the survivors of the 9/11 tragedy.

2. Pledge of Allegiance - Eric Buermann, Chairman, Governing Board

The Color Guard from the National Guard Armory led the Pledge of Allegiance.

Chair Buermann thanked the service men for being at the meeting and for defending our national interests.

3. Recognition of John C. 'Johnny' Jones - Presented by Eric Buermann, Chairman, Governing Board

Senator Phil Lewis recognized Johnny Jones and spoke of his love for the Everglades and the environment. He said Mr. Jones was a gem in Florida's history.

Ms. Estenoz welcomed friends and family of Mr. Jones. Ms. Estenoz said Mr. Jones was one of the best friends to the State of Florida and had tremendous love for the environment. Ms. Estenoz reported over the last five decades, Johnny Jones' tireless passion to do what was right helped put about a million acres of land in public ownership. Ms. Estenoz also recognized Mr. Jones' many years of lobbying in Tallahassee to help push for the passage of 76 environmental bills. These bills worked to improve and preserve the natural Florida that he saw disappearing in a rapidly growing state.

Public Comment: John Marshall, Arthur Marshall Foundation, recognized Johnny Jones and his work on the Kissimmee River. He said a memorial brick will be laid at the Arthur Marshall Foundation as a tribute to Johnny Jones.

Public Comment: Jim Harvey, citizen, recognized Johnny Jones and reported on the history of Mr. Jones and his work on Lake Okeechobee with phosphorus removal.

Public Comment: Manley Fuller, Florida Wildlife Federation, recognized Johnny Jones and said he was the most effective lobbyist in Florida working for the restoration of Everglades. He thanked the Board in moving forward with Everglades restoration.

Public Comment: Martha Musgrove, citizen, also recognized Johnny Jones for his many accomplishments on the restoration of the Kissimmee River. She said Johnny never gave up on his love for Everglades restoration.

Public Comment: Rosa Durando, citizen, recognized Johnny Jones and his battle of the cross Florida barge canal. She stated he will be missed by everyone.

Public Comment: Bob Mooney, USGS, also recognized Johnny Jones for his determination for Everglades restoration.

4. Employee Recognitions - Presented by Carol Wehle, Executive Director

- September Team of the Month: The Numeric Nutrient Criteria Technical Team

- 25 Years Service Recognition: Gary Fischer

- 30 Years Service Recognition: George Bryant

Carol Wehle, Executive Director, recognized the September Team of the month, and a 25 year service award.

5. Agenda Addendum - Annette Carter, Director, Office of Governing Board & Executive Services

Annette Carter, Director, Office of Governing Board & Executive Services, read into the record:

Section 120.525, Florida Statutes, allows the District to change the published agenda for good cause shown, as determined by the presiding officer. The Chairman has determined good cause exists. These changes are being made in order to permit the Governing Board to accomplish necessary public business at this meeting and to reflect the items on the agenda that have been deleted, revised, added or postponed. These changes have been listed in the Addendum available to the public at the entrance to this meeting room and provided to the Governing Board.

6. Abstentions by Board Members from items on the Agenda

Joe Collins abstained from Consent Agenda Item 24.

7. Project & Lands Committee Report - Jerry Montgomery, Vice Chair

Mr. Montgomery reported on the Project and Lands Committee meeting which was held on September 8, 2010. Issues discussed were:

- Progress update on Indian River Lagoon South, Picayune Strand Restoration, Site 1 Impoundment and L-31 North Seepage Pilot Projects.
- The proposed acquisition of Corkscrew Regional Ecosystem (CREW) tracts.
- The District's Agricultural Lease Policy regarding determination of rental values.
- A proposed clarification of the Surplus Lands Process to eliminate the need to utilize the surplus procedure in Right-of-Way enforcement cases of less than 3 acres in size.

8. Water Resource Advisory Commission (WRAC) Report - Shannon Estenoz, Chair

Mark Perry, WRAC member, reported on the WRAC meeting which was held on September 2nd in St. Cloud, Florida. Issues discussed were:

- Initiative to enhance water supply services in South Florida.
- Lake Okeechobee Committee Report.
- Intergovernmental Policy and Planning.
- South Florida Ecosystem restoration task force and acquisition strategy update.
- Kissimmee programs and issues.
- Orlando Service Center activities.

Ms. Estenoz reported WRAC has requested an update on EPA's amended determination.

Mr. Powers stated WRAC requested a synopsis of EPA's amended determination and the Special Master's report.

Mr. Montgomery said WRAC members give a tremendous amount of effort and time to the agency and, as a matter of courtesy and efficiency, the District owes them a basic summary of these issues.

Ms. Wehle said staff will put together a briefing packet for the public and WRAC members.

Mr. Powers requested a discussion regarding the memo addressed to WRAC from Sheryl Wood, General Counsel, regarding WRAC members and their firms doing business with the District or subject to regulation by the District.

Ms. Wood explained the memo was not legal advice to WRAC and stated this is not new information. The law has not changed and this information is provided to every WRAC member in their orientation packet. She said there has been changes in enforcement in the state with greater scrutiny being placed on public officers and employees. Ms. Wood provided background information of an investigation that had taken place in Palm Beach County. She noted this issue will be on the WRAC agenda in October.

Ms. Estenoz questioned the waiver process and said the concern is the broad language about business entities subject to regulation by the District.

Mr. Powers requested clarity on the voting language and noted WRAC does not vote on issues. He stated WRAC functions because all the stakeholder groups attend the meetings and said it will not work if certain groups are exempt. He wants the spirit of WRAC to remain the same.

Mr. Montgomery agreed with Mr. Powers and stated the essence and value of WRAC is it populated with stakeholders who have different goals and they all work through a process to reach consensus and bring it to the Board.

Ms. Wehle said stakeholders will remain on WRAC. The stakeholders can disclose their business relationship and the Governing Board can waive requirements for prohibitions. Ms. Wehle said they will reach out to the WRAC members and explain the intent of the memo and ensure them the Board wants them to remain on WRAC. Staff will provide a presentation to WRAC in October.

There was also discussion on WRAC being subject to the Sunshine Law.

Consent Agenda

9. Public Comment on Consent Agenda

Public Comment: Newton Cook, United Water Fowlers, commented on the Sunshine Law and advisory groups. He also thanked the Board for opening up public land for the citizens and supports the agenda items for FWC law enforcement.

Mr. Collins made it very clear that WRAC is subject to the Sunshine Law.

Public Comment: Rosa Durando, citizen, commented on Agenda Item 34, 44 and 45 and funding FWC for law enforcement and she opposes lead shot for hunting in publicly-owned land.

Mr. Strowd reported Florida Fish and Wildlife Commission will be reporting on lead shot at the October Board meeting.

Public Comment: Patrick Hayes, Martin County Commissioner, thanked the District and USACE for supporting the restoration and preservation of Florida's watershed. He praised Johnny Jones for revitalizing and preserving the Everglades.

10. Pull Items for Discussion from Consent Agenda

There was no items pulled from the Consent Agenda for discussion.

11. Board Comment on Consent Agenda

Regulatory Matters

12. Denials

Consent Agreements

Conservation Easements

13. Right of Way Occupancy New Permits

Right of Way Occupancy Permit Requests with Waiver of District Criteria

Everglades Restoration and Capital Projects

- 14. 2010-900** A Resolution of the Governing Board of the South Florida Water Management District approving release of canal and road reservations, issuance of a non-use commitment as to mineral reservation, and issuance of an approval of release of canal reservation, containing 16.89 acres, more or less, Parcels A, B, and C, Lakeview Square, Plat Book 146, Page 37, Section 31, Township 48 South, Range 41 East, Broward County, Florida; providing an effective date. (Vinola Rada, ext. 6158)

- 18. 2010-904** A Resolution of the Governing Board of the South Florida Water Management District amending Subsections 1 and 2 of Section 140-10, District Policy Code, regarding administration of agricultural leases to make certain revisions; providing for inclusion in the District Policy Code, providing for severability; providing an effective date. (Ruth Clements, ext. 6271)

Executive Office

- 19. 2010-905** A Resolution of the Governing Board of the South Florida Water Management District to authorize amending purchase order 4500042450 for the current SAP BW Administrator for a time period not to exceed six months (October 1, 2010 - April 30, 2011) with Meridian Partners, LLC and authorize a waiver of competition as an exception to the general standards of competition, not to exceed \$165,000 of ad valorem funds which are subject to Governing Board approval of the FY11 budget; providing an effective date. (Purchase order 4500042450) (Paul Dumars, ext. 6212)
- 20. 2010-906** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into an amendment with Intellisoft Technologies, Inc. for purchase order 4500008780 for an SAP HR/Travel Consultant for six months (September 24, 2010 - March 31, 2011), as a special procurement using the state of Florida contract 973-561-10-1, in the amount of \$171,502, of which ad valorem funds in the amount of \$6,502 are budgeted in FY10 and the remainder is subject to Governing Board approval of the FY11 budget, providing an effective date. (Purchase Order 4500008780) (Paul Dumars, ext. 6212)
- 21. 2010-907** A Resolution of the Governing Board of the South Florida Water Management District to authorize amending purchase order 4500042453 for the current SAP Visual Composer Consultant for a time period not to exceed one year (October 1, 2010 - September 30, 2011) with Meridian Partners, LLC and authorize a waiver of competition as an exception to the general standards of competition, not to exceed \$316,000 of ad valorem funds which are subject to Governing Board approval of the FY11 budget; providing an effective date. (Purchase order 4500042453) (Paul Dumars, ext. 6212)

22. Authorize issuance of a Final Order in the proceeding SPOTS, Inc., v. South Florida Water Management District & Daniel Borislow, LLC, that adopts the Recommended Order issued by Administrative Law Judge J. Lawrence Johnston in DOAH Case No. 10-0635. Ex parte communications to Governing Board members are prohibited by Section 120.66, Florida Statutes, prior to approval of the Final Order. (Sheryl G. Wood, General Counsel, ext. 6976)

Regulatory and Public Affairs

23. **2010-908** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into two year agreements with Water Savings Incentive Program applicants in an amount not to exceed \$300,000 for which ad valorem funds are budgeted, subject to Governing Board approval of the FY2011 budget; delegating authority to the Executive Director to execute project funding agreements for the projects; providing an effective date. (Mark Elsner, ext. 6156)
24. **2010-909** A Resolution of the Governing Board of the South Florida Water Management District to authorize an amendment to agreement OT061107A-01/36000001161 for the Florida Ranchlands Environmental Services Program, West Waterhole Pasture Pilot Project to extend the term of the agreement one year to September 30, 2011 and add additional Lake Okeechobee Trust Funds in the amount of \$393,750 which are subject to Governing Board approval of the FY11 budget; providing an effective date (Benita Whalen, ext 2957)

Joe Collins abstained from Consent Agenda Item 24.

Corporate Resources

25. **2010-910** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a purchase order with Success Factors, Incorporated for the annual renewal of Performance Manager software maintenance and subscriptions, for the time period October 1, 2010 through September 30, 2013, in the total amount of \$235,200 for which \$78,400 of ad valorem funds are budgeted in FY11 and the remainder will be budgeted in FY12 - FY13, subject to Governing Board approval of the FY11 - FY13 budgets; providing an effective date. (PR #10117730) (Sharon Trost, ext. 6814)
26. **2010-911** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a purchase order with Dell Marketing LP for the annual renewal of Dell server and peripheral hardware maintenance, for the time period November 1, 2010 - October 31, 2011, using State of Florida Contract #250-000-09-1, in the amount of \$237,733 for which ad valorem (\$199,233) and dedicated (CERP - \$38,500) funds are budgeted subject to Governing Board approval of the FY11 budget; providing an effective date. (PR #10117742) (Sharon Trost, ext. 6814)

- 27. 2010-912** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a purchase order with Environmental Systems Research Institute (ESRI) for the annual renewal of geographic information systems software maintenance and upgrades, for the time period November 1, 2010 - October 31, 2011, in the amount of \$287,201, for which ad valorem (\$254,701) and dedicated (CERP - \$32,500) funds are budgeted subject to Governing Board approval of the FY11 budget; providing an effective date. (PR #10117746) (Sharon Trost, ext. 6814)
- 28. 2010-913** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a purchase order with Presidio Corporation for the annual renewal of Cisco Systems network hardware and software maintenance, for the time period October 1, 2010 - September 30, 2011, using the St. Lucie School Board contract #06-05E, in the amount of \$337,672 for which ad valorem (\$330,081) and dedicated (CERP - \$7,591) funds are budgeted subject to Governing Board approval of the FY11 budget; providing an effective date. (PR #10117748) (Sharon Trost, ext. 6814)
- 29. 2010-914** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a purchase order with GCA.net Technology Services for the annual renewal of Sun Microsystems server, storage, and peripheral hardware maintenance, for the time period November 1, 2010 - October 31, 2011, using the State of Florida Contract #250-000-09-1, in the amount of \$310,388 for which ad valorem funds are budgeted subject to Governing Board approval of the FY11 budget; providing an effective date. (PR #10117750) (Sharon Trost, ext. 6814)
- 30. 2010-915** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a purchase order with FusionStorm for the annual renewal of Symantec storage software maintenance and upgrades, for the time period November 1, 2010 - October 31, 2011, using the GSA Schedule #GS-35F-0131R, in the amount of \$224,007 for which ad valorem (\$204,101) and dedicated (CERP - \$19,906) funds are budgeted subject to Governing Board approval of the FY11 budget; providing an effective date. (PR #10117743) (Sharon Trost, ext. 6814)
- 31. 2010-916** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a purchase order with Forsythe Solutions Group, Inc. for the annual renewal of EMC storage hardware and software maintenance and upgrades, for the time period November 1, 2010 - October 31, 2011, using the State of Florida Contract #250-000-09-1, in the amount of \$474,618 for which ad valorem funds are budgeted subject to Governing Board approval of the FY11 budget; providing an effective date. (PR #10117745) (Sharon Trost, ext. 6814)

- 32. 2010-917** A Resolution of the Governing Board of the South Florida Water Management District to authorize amending a purchase order with Terremark Worldwide, Inc. for a managed backup and restore service (disaster recovery alternate data center) for the time period October 1, 2010 - September 30, 2013, using the Broward College contract number ITN-2010-001-BM, in the amount of \$860,000 for which ad valorem funds in the amount of \$260,000 are budgeted in FY11 and the remainder will be budgeted in FY12 FY13, subject to Governing Board approval of the FY11 FY13 budgets; providing an effective date. (PR #10117751) (Sharon Trost, ext. 6814)

Operations and Maintenance

- 33. 2010-918** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering a three (3) year work order contract with Toler Enterprises Incorporated, the lowest responsive and responsible bidder, for Slope Mowing Services within the region of the Homestead Field Station in the amount of \$327,360 for which ad valorem funds of \$107,810.56 are subject to Governing Board approval of the FY11 budget and the remainder is subject to Governing Board approval of the FY12-FY13 budgets; providing an effective date. (Contract Number 4600002209) (Ron Zasloff, ext. 7014)
- 34. 2010-919** A Resolution of the Governing Board of the South Florida Water Management District authorizing the Florida Fish and Wildlife Conservation Commission to establish District lands, consisting of approximately 2,209 acres located in Highlands and Okeechobee counties, as part of the Kissimmee River Public Use Area, subject to terms and conditions; providing an effective date. (Steve Coughlin, ext. 2603)
- 35. Board Vote on Consent Agenda**

Note: Joe Collins abstained from voting on Consent Agenda Item 24.

Motion made by Jerry Montgomery, seconded by Joe Collins to Approve the following item(s): 9, 10, 11, 12, 13, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

Vote called. Voting yes: Jerry Montgomery, Joe Collins, Sandy Batchelor, Eric Buermann, Charles Dauray, Shannon Estenoz, Kevin Powers, Glenn Waldman. Motion passed.

Discussion Agenda

36. TECHNICAL REPORTS

State of Water Resources

A) Water Conditions & Water Supply Report - Susan Sylvester, Director, Operations Control & Hydro Management Department (ext 6152)

B) Ecological Conditions Report - Linda Lindstrom, Director, Restoration Sciences Department (ext. 6820)

C) US Army Corps of Engineers' Lake Okeechobee Report - Kimberley Taplin, P.E., West Palm Beach Deputy Program Manager for Restoration, US Army Corps of Engineers

Susan Sylvester, Director, Operations Control & Hydro Management Department, presented information on the overall rainfall and groundwater levels in the area. Ms. Sylvester reported on the water releases into Lake Okeechobee and the Lake's water hydrograph's comparison. Ms. Sylvester reported on the water levels in the Water Conservation Areas (WCAs) and the 2010 tropical activity.

Linda Lindstrom, Director, Restoration Sciences Department, presented the ecological conditions report. She reported conditions in the Kissimmee Basin continue to be seasonally normal. Ms. Lindstrom also reported on the salinity levels in the Caloosahatchee and St. Lucie estuaries and stated the oyster revitalization is continuing. Ms. Lindstrom reported there are five active snail kite nests remaining in STA-5.

Dan Haunert, Lead Environmental Scientist, reported on the monitoring of the oyster beds in the St. Lucie estuary.

Kim Taplin, West Palm Beach Deputy Program Manager for Restoration, USACE, presented the USACE's Lake Okeechobee report.

Public Comment: Mark Perry, Florida Oceanographic, commented on discharges from Lake Okeechobee to the St. Lucie Estuary and said the oyster conditions are coming back but these conditions can change very quickly.

Public Comment: Pete Quasius, Collier Audubon, commented on the revitalized oyster beds and said adaptive management is working.

37. Water Supply Management in Lake Okeechobee Service Area (Time certain - 1:30 PM)

B) Status update and consideration of the 2010 Adaptive Protocols Document - Susan Gray, Chief Environmental Scientist, Restoration Sciences Department (ext.6919)

Susan Gray, Chief Environmental Scientist, Restoration Sciences Department, presented a status update and consideration of the 2010 Adaptive Protocols document.

Dr. Gray said the level of participation in the Adaptive Protocols process was very high.

Reviewing the key components of the Adaptive Protocols document, Dr. Gray focused on the low subband dry season guidance plus baseflow & beneficial use subband guidance.

Cal Neidrauer, Chief Engineer, explained the flowchart to guide recommendations for Lake Okeechobee releases to the Caloosahatchee Estuary for 2008-LORS Base Flow & for environmental water supply.

Mr. Neidrauer then reported on the simulated modeling conducted to evaluate benefits and impacts from the proposed protocols.

Dr. Gray presented the summary, conclusion and staff's recommendation of AP5.40 as a logical compromise between AP5.30 and AP5.50. At AP5.40 there are:

- improvements for all water resources dependent on the Lake, and
- restricts releases to the Caloosahatchee Estuary if the chance is >40% that the dry season Lake stage falls below elevation 11.0 ft, NGVD.

Should the condition be reached in the flowchart where the recommendation is for no releases from S-77 to the Caloosahatchee Estuary:

- Staff will brief the Governing Board at their next scheduled meeting during the State of the Water Resources agenda item, and
- Staff will recommend that the Governing Board issue a "water shortage warning" for all users dependent upon the lake to begin conserving water as the potential for water shortage has increased.

Beth Ross, Sr. Attorney, also reported there are two petitions that have been filed related to water management in the Lake Okeechobee Service Area.

Public Comment: John Casssani, Lee County citizen, commented on a recovery plan and shared adversity. He requested to begin rulemaking for water reservations for the Caloosahatchee Estuary.

Public Comment: Mark Colbert, C-43 AG Water Users, commented on past water shortages and how agriculture suffered through them. He supports the adaptive protocol document.

Public Comment: Mick Denham, City of Sanibel, provided a written document to the Board recommending the Board address the Caloosahatchee inequities and also commented on the concerns of economic impacts.

Public Comment: Pete Quasius, Collier Audubon, said the results of the adaptive protocol document are better but are not good enough. He said the Board needs to address shared adversity.

Public Comment: James Evans, Southwest Florida Watershed Council, agrees the adaptive protocols have improved but noted there are still inequities of water supply for the environment and water supply for the permitted users during the dry season.

Public Comment: John Fumero, Lee County, said there has been a great deal of improvement but noted the legal obligations of the Board for water supply to the environment. He requests the Board be given a broader perspective as to what can be done as policy makers to legally protect the water supplies for the Caloosahatchee Estuary. Mr. Fumero stated AP5.50 is a fair compromise.

Mr. Ammon reported the rulemaking development for reservations for the Caloosahatchee Estuary was initiated in December 2009 and is ongoing.

Public Comment: Jane Graham, Audubon of Florida, commended staff for their dedicated efforts to work through this process. Audubon requested diverse modeling runs separate from the AP5.50 be done in order to show options that provide more flexibility among users. Audubon supports the AP5.50 as the best option.

Mr. Ammon discussed the consequences of not accepting the Adaptive Protocols Document today.

Ms. Estenoz asked about the modeling runs that have not been done.

Mr. Neidrauer explained all model runs performed compared to LORS 2008. AP5.30, AP5.40 and Ap5.50 all meet the win/win, neutral criteria.

Public Comment: Kurt Harclerode, Lee County, read into the record a statement from Lee County Commissioner Tammy Hall about the importance of the needs for Caloosahatchee Estuary water supply releases.

Public Comment: Marcy LaHart, Conservancy of Southwest Florida, said her client did not file a lawsuit. She commented on shared adversity, consumptive use permits, and violating MFLs.

Public Comment: Joan Lawrence, Department of the Interior, commended staff working with stakeholders through this process. She commented on LORS 2008 and needing water supply for Everglades National Park. She urged the Board to look at the system historically.

Public Comment: Tom MacVicar, Agriculture, thanked the Board for their patience and time. He supports AP5.40 and said it is a good plan.

Public Comment: Drew Martin, Sierra Club, supports Audubon and Conservancy of Southwest Florida's opinion on this issue. He also suggested evaluating what types of crops that agriculture is growing and what crops are best for the area.

Public Comment: Mark Perry, Oceanographic, said there needs to be follow-up on the broader issues discussed by the Board members.

Public Comment: Tommy Perry, Johnson Prewitt, commented on a process for managing the Lake without impacting users and supports AP5.40 as a guide to follow until a better method is developed.

Public Comment: Charles Shinn, Florida Farm Bureau Federation, commented on WRAC's consensus and feels that staff's recommendation is fair and supports AP5.40.

Public Comment: RaeAnn Wessel, Sanibel Captiva Conservation Foundation (SCCF) said since LORS 2008, the Caloosahatchee Estuary has not improved. She also commented on the different standards for natural systems and water supply and urged the Board to tweak the plan.

Public Comment: Commissioner Ray Judah, Lee County, commented that the current Governing Board recognizes the importance of balancing the resources of Lake Okeechobee for the permitted uses and environmental releases for the natural systems but the staff are acting as if they are subservient to the sugar industry by their recommendation. All model runs have adverse impacts the estuaries. He stated concern for the agriculture industry. Commissioner Judah stated support for AP5.50 as a compromise but thinks, with more time, a better protocol can be achieved.

Ms. Wehle responded to Commissioner's Judah's comments regarding staff's commitments. She commended staff on their dedication to the areas that they represent - Lake Okeechobee, the estuaries, the STAs etc. and because they represent their areas so fervently, there is sometimes tension. She noted there is tension within this agency with people that are advocating the area that they are responsible for. There is a balancing act within this agency because the scientists and engineers are dedicated to the resource. She also noted there is not a communication disconnect between the Governing Board and staff.

Chair Buermann also commented on the number of meetings and briefings the Board attends and stated staff are always concerned about the environment.

Mr. Montgomery also took offense to Commissioner Judah's statement and noted that what is said about the staff is said about him and assured Commissioner Judah he is not in anyone's pocket.

Mr. Joe Collins made a motion, seconded by Kevin Powers supporting AP5.40 modeling run.

Ms. Estenoz said the adaptive protocols is all about preventing what happened last year. She wants a protocol that tells staff to be more balanced and does not support AP5.40 and supports the AP5.50.

Ms. Ross explained that this is a guidance document and the Board does not need to take a vote. The staff is looking for consideration of the Adaptive Protocols modeling runs in order for them to make recommendations on releases to the USACE.

Mr. Waldman supports the AP5.50 modeling run.

Ms. Estenoz supports the AP5.50 modeling run.

Mr. Montgomery supports the AP5.40 modeling run.

Chair Buermann noted the number of emails sent to the Board. Those emails will be part of the record.

Chair Buermann supports the AP5.50 modeling run.

Mr. Dauray said the environment has a direct economic impact and he is now looking at this with an economic point of view. He said the Caloosahatchee suffers during a dry season and would prefer an equation that assures 5 inches of water and 450 cfs when needed during the dry season. Mr. Dauray reported no to staff's recommendation.

Mr. Collins supports the AP5.40 modeling run.

Mr. Powers supports the AP5.40 modeling run.

Ms. Batchelor supports the AP5.50 modeling run.

Ms. Wehle said hearing all the discussion, staff will move forward with the Governing Board deliberate considerations.

Joe Collins withdrew his motion. Mr. Powers withdrew his second motion.

Ms. Estenoz said if the stakeholders want to continue this dialog, then the discussions should continue at the Board level.

61. Floridan Aquifer Monitoring Update - Peter Kwiatkowski, Director, Resource Evaluation Division (ext. 2547)

Peter Kwiatkowski, Director, Resource Evaluation Division, presented information on the monitoring of the Floridan Aquifer system. He reported the Floridan Aquifer supports almost 10 million people as their primary source of water. He reported on the geographic and vertical differences of the Florida Aquifer system throughout the state. Mr. Kwiatkowski then reported on the Lower Floridan Aquifer and the Central Florida Coordination Area (CFCA) 5-year plan to use the aquifer as an alternate source of water.

Mr. Montgomery commented on the 5-year plan and requested to accelerate funding for this study before the budget is finalized.

Public Comment: John Marshall, Arthur Marshall Foundation, stated his concerns on the drawdowns affecting the wetlands.

Everglades Restoration and Capital Projects

- 38. 2010-920** A Resolution of the Governing Board of the South Florida Water Management District authorizing the Executive Director to enter into a letter agreement with the U.S. Army Corps of Engineers, pursuant to the Project Partnership Agreement for the Indian River Lagoon South Phase 1 Project, for the U.S. Army Corps of Engineers to construct infrastructure relocations on behalf of the South Florida Water Management District, at an estimated cost of \$1,983,031, and authorize a budget transfer of \$1,983,031 of Comprehensive Everglades Restoration Plan ad valorem funds from the CERP Managerial Reserves to the Everglades Restoration and Capital Projects Resource Area; providing an effective date. (Sue Ray, ext. 4019)

Jeff Kivett, Department Director, provided information on this agenda item.

Public Comment: Mark Perry, Florida Oceanographic, commended staff and the Board for moving forward with this project.

Public Comment: Colonel Alfred Pantano, USACE, said this is a great project for Martin County and brings us closer to Everglades restoration. The Project Partnership Agreement is to advance construction on a host of components critical to restoring the Indian River Lagoon and the St. Lucie Estuary.

Chair Buermann announced the signing of the Project Partnership Agreement will be signed following the vote.

Motion made by Kevin Powers, seconded by Joe Collins to Approve the following item(s): 38

Vote called. Voting yes: Kevin Powers, Joe Collins, Sandy Batchelor, Eric Buermann, Charles Dauray, Jerry Montgomery, Glenn Waldman. Not present: Shannon Estenoz. Motion passed.

- 39. 2010-921** A Resolution of the Governing Board of the South Florida Water Management District to approve the purchase of land interests comprising 5.07 acres, more or less, in Collier County, for use as a field station site for Big Cypress Basin in the amount of \$2,098,000 together with all associated costs and approve the payment of traffic impact fees at closing for which ad valorem funds, Capital Projects Big Cypress Basin, are subject to Governing Board approval of the FY11 budget; approve declaring surplus, disposal of, and removal from the asset records, any such structures and improvements deemed unnecessary for the stated purpose of the original acquisition; providing an effective date. (Tom Hanaway, ext. 6668)

No presentation provided.

Motion made by Jerry Montgomery, seconded by Joe Collins to Approve the following item(s): 39

Vote called. Voting yes: Jerry Montgomery, Joe Collins, Sandy Batchelor, Eric Buermann, Charles Dauray, Shannon Estenoz, Kevin Powers, Glenn Waldman. Motion passed.

- 40. 2010-922** A Resolution of the Governing Board of the South Florida Water Management District to approve the purchase of land interests containing 191.12 acres, more or less, for the Southern Corkscrew Regional Ecosystem Watershed Project ("Critical CREW Project"), in Lee County, in the amount of \$3,828,890.00, together with statutory costs and attorney's fees not to exceed \$920,105.50 and all associated costs, for which dedicated funds, Florida Forever Trust Fund, are available subject to Governing Board approval of the FY11 Budget; approve declaring surplus, disposal of, and removal from the asset records, any such structures and improvements deemed unnecessary for the stated purpose of the original land acquisition; providing an effective date. (Tom Hanaway, ext. 6668)

No presentation provided.

Motion made by Jerry Montgomery, seconded by Charles Dauray to Approve the following item(s): 40

Vote called. Voting yes: Jerry Montgomery, Charles Dauray, Sandy Batchelor, Eric Buermann, Joe Collins, Shannon Estenoz, Kevin Powers, Glenn Waldman. Motion passed.

- 41. 2010-923** A Resolution of the Governing Board of the South Florida Water Management District advising the Department of Environmental Protection of the proposed acquisition of land interests containing 191.12 acres for the Southern Corkscrew Regional Ecosystem Watershed Project ("Critical CREW Project"), in Lee County, and requesting the release of funds in the amount of \$3,828,890.00 from the Florida Forever Trust Fund for acquisition of such land interests, together with statutory costs and associated costs; providing an effective date. (Tom Hanaway, ext. 6668)

No presentation provided.

Motion made by Joe Collins, seconded by Shannon Estenoz to Approve the following item(s): 41

Vote called. Voting yes: Joe Collins, Shannon Estenoz, Sandy Batchelor, Eric Buermann, Charles Dauray, Jerry Montgomery, Kevin Powers, Glenn Waldman. Motion passed.

Corporate Resources

- 42. 2010-924** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a five (5) year lease, with Centrepark West XII Holdings, LP for the CERP office lease, in an amount not to exceed \$1,667,093.68, of which CERP ad valorem (\$59,158) and dedicated funds (Everglades Trust Fund - \$106,244) are subject to Governing Board approval of the FY11 budget, and the remainder is subject to Governing Board approval of the FY12-FY15 budgets; providing an effective date. Contract no: 4600002208. (Jon Gleason, ext.6380)

No presentation provided.

Motion made by Jerry Montgomery, seconded by Kevin Powers to Approve the following item(s): 42

Vote called. Voting yes: Jerry Montgomery, Kevin Powers, Sandy Batchelor, Eric Buermann, Joe Collins, Charles Dauray, Glenn Waldman. Not present: Shannon Estenoz. Motion passed.

- 43. 2010-925** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a purchase order with Mythics, Inc. for the annual renewal of Oracle software maintenance and upgrades, for the time period October 25, 2010 to October 24, 2011, using the GSA Schedule #GS-35F-0153M, in the amount of \$1,000,836 for which ad valorem (\$882,858) and dedicated (CERP - \$117,978) funds are subject to Governing Board approval of the FY11 budget; providing an effective date. (PR #10117747) (Sharon Trost, ext. 6814)

No presentation provided.

Motion made by Jerry Montgomery, seconded by Joe Collins to Approve the following item(s): 43

Vote called. Voting yes: Jerry Montgomery, Joe Collins, Sandy Batchelor, Eric Buermann, Kevin Powers, Glenn Waldman. Not present: Charles Dauray, Shannon Estenoz. Motion passed.

Operations and Maintenance

- 44. 2010-926** A Resolution of the Governing Board of the South Florida Water Management District to authorize an amendment to cooperative agreement C-10162 / 3600000000 with the Florida Fish and Wildlife Conservation Commission (FWC) for Law Enforcement Services on District lands to provide funding for the next three (3) years of the agreement in an amount not-to-exceed \$2,882,336, of which \$932,525 in ad valorem funds and non ad valorem funds (Wetlands Mitigation Fund) are subject to Governing Board approval of the FY11 budget and the remainder is subject to Governing Board approval of the FY12-FY13 budgets; providing an effective date. (Contract Number C-10162-A10 / 3600000000-A10) (Rick Conover, ext. 3331)

No presentation provided.

Public Comment: Drew Martin, Sierra Club, commented on his concerns for lead shot being used and said it is a serious issue.

Motion made by Jerry Montgomery, seconded by Joe Collins to Approve the following item(s): 44

Vote called. Voting yes: Jerry Montgomery, Joe Collins, Sandy Batchelor, Eric Buermann, Kevin Powers, Glenn Waldman. Not present: Charles Dauray, Shannon Estenoz. Motion passed.

- 45. 2010-927** A Resolution of the Governing Board of the South Florida Water Management District to authorize an amendment to cooperative agreement 4600000961 with the Florida Fish and Wildlife Conservation Commission (FWC) to continue providing Land Management Services and the continued establishment and operation of District land as Wildlife Management Areas, Wildlife and Environmental Areas, Public Use Areas and Small Game Hunting Areas, to extend the term by three (3) years from October 1, 2010 to September 30, 2013, in the amount of \$1,730,288 of which \$565,380 in ad valorem funds are subject to Governing Board approval of the FY11 budget and the remainder is subject to Governing Board approval of the FY12-FY13 budgets; providing an effective date. (Contract Number 4600000961-A01) (David Foote, ext. 2686)

No presentation provided.

Motion made by Kevin Powers, seconded by Joe Collins to Approve the following item(s): 45

Vote called. Voting yes: Kevin Powers, Joe Collins, Sandy Batchelor, Eric Buermann, Charles Dauray, Jerry Montgomery, Glenn Waldman. Not present: Shannon Estenoz. Motion passed.

- 46. 2010-928** A Resolution of the Governing Board of the South Florida Water Management District to authorize an amendment to cooperative agreement 4600001890 with the U.S. Geological Survey Florida Integrated Science Center (Ft. Lauderdale) for ground water and surface water monitoring, to extend the term by two (2) years from October 1, 2010 to September 30, 2012, with an option for two (2) one-year renewals in the amount of \$6,147,540 of which, \$1,536,885 in ad valorem funds are subject to Governing Board approval of the FY11 budget and the remainder is subject to Governing Board approval of the FY12-FY14 budgets; providing an effective date. (Contract Number 4600001890-A01) (Cherry James, 4709)

No presentation provided.

Motion made by Jerry Montgomery, seconded by Charles Dauray to Approve the following item(s): 46

Vote called. Voting yes: Jerry Montgomery, Charles Dauray, Sandy Batchelor, Eric Buermann, Joe Collins, Kevin Powers, Glenn Waldman. Not present: Shannon Estenoz. Motion passed.

- 47. 2010-929** A Resolution of the Governing Board of the South Florida Water Management District to authorize an amendment to cooperative agreement 4600001889 with the U.S. Geological Survey Florida Integrated Science Center (Orlando) for ground water and surface water monitoring, to extend the term by two (2) years from October 1, 2010 to September 30, 2012, with an option for two (2) one-year renewals in the amount of \$1,742,716 of which, \$435,679 in ad valorem funds are subject to Governing Board approval of the FY11 budget and the remainder is subject to Governing Board approval of the FY12-FY14 budgets; providing an effective date. (Contract Number 4600001889-A01) (Cherry James, 4709)

No presentation provided.

Motion made by Charles Dauray, seconded by Jerry Montgomery to Approve the following item(s): 47

Vote called. Voting yes: Charles Dauray, Jerry Montgomery, Sandy Batchelor, Eric Buermann, Joe Collins, Kevin Powers, Glenn Waldman. Not present: Shannon Estenoz. Motion passed.

- 48. 2010-930** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 365-day contract with Lucas Marine Construction LLC., the lowest responsive and responsible bidder, for the S-142 & S-143 Automation and Gate Replacement in the amount of \$1,449,495 for which ad valorem funds are subject to Governing Board approval of the FY11 budget; providing an effective date. (Contract Number 46000002207) (Alex Garcia, ext. 4048)

No presentation provided.

Motion made by Joe Collins, seconded by Jerry Montgomery to Approve the following item(s): 48

Vote called. Voting yes: Joe Collins, Jerry Montgomery, Sandy Batchelor, Eric Buermann, Charles Dauray, Kevin Powers, Glenn Waldman. Not present: Shannon Estenoz. Motion passed.

- 49. 2010-931** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 212-day contract with Metro Equipment Service Incorporated, the lowest responsive and responsible bidder, for the C-100 and C-2 Bank Stabilization Project in the amount of \$1,234,150 for which ad valorem funds are subject to Governing Board approval of the FY11 budget; providing an effective date. (Contract Number 4600002221) (Sara Sciotto, ext. 4077)

No presentation provided.

Motion made by Joe Collins, seconded by Jerry Montgomery to Approve the following item(s): 49

Vote called. Voting yes: Joe Collins, Jerry Montgomery, Sandy Batchelor, Eric Buermann, Charles Dauray, Kevin Powers, Glenn Waldman. Not present: Shannon Estenoz. Motion passed.

50. Public Comment

- Regulatory Policy Issues

- General Public Comment

There was no public comment.

Public Hearing

Regulatory and Public Affairs

- 51.** Adopt amendments to Rules 40E-63.400, 40E-63.401, 40E-63.402, 40E-63.404, 40E-63.406, 40E-63.415, 40E-63.420, 40E-63.430, and 40E-63.444, F.A.C., repeal Rules 40E-63.432, 40E-63.434, 40E-63.436, 40E-63.440, 40E-63.442, 40E-63.450, 40E-63.452, 40E-63.454, 40E-63.456, 40E-63.458, 40E-63.460, and 40E-63.470, F.A.C., and new Rules 40E-63.435, 40E-63.437, 40E-63.438, 40E-63.439, 40E-63.441, 40E-63.443, 40E-63.446, 40E-63.461, 40E-63.462, and 40E-63.464, F.A.C., and the materials incorporated by reference in Rule 40E-63.404, F.A.C., regarding the Everglades Regulatory Program: C-139 Basin (Pam Wade, ext 6901)

Chair Buermann opened the Public Hearing.

Pam Wade, Director, Everglades Regulation Division, presented information on Agenda Item 51.

Chair Buermann closed the Public Hearing.

Motion made by Jerry Montgomery, seconded by Glenn Waldman to Approve the following item(s): 51

Vote called. Voting yes: Jerry Montgomery, Glenn Waldman, Eric Buermann, Joe Collins, Kevin Powers. Not present: Sandy Batchelor, Charles Dauray, Shannon Estenoz. Motion passed.

Staff Reports

52. General Counsel Report - Sheryl Wood

No report provided.

53. Executive Director's Report - Carol Wehle

- Report on Permits Issued by Authority Delegated to the Executive Director from August 1 to August 31, 2010

Ms. Wehle reported on the permits issued by authority delegated to the Executive Director from August 1 - August 31, 2010. Ms. Wehle reported on an active permit for a large project on the west coast of Florida in Big Cypress.

Ms. Wehle also reported on her direction to staff to use the AP5.50 modeling run and to use it conservatively. Staff will report back their assessment of this protocol.

54. Board Comment

Chair Buermann requested the Board members review the 2011 Governing Board meeting schedule and provide their feedback to Ms. Carter.

Attorney Client Sessions

Executive Office

55. Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in United States of America v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 88-1886-CIV-Moreno.

ATTENDEES: Governing Board Members S. Batchelor, E. Buermann, J. Collins, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, G. Waldman; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, K. Burns, J. Nutt, F. Bartolone, and outside counsel D. Moore. (Sheryl G. Wood, ext. 6976)

Action Items (if any) Stemming from Attorney Client Session Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in United States of America v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 88-1886-CIV-Moreno. (Sheryl G. Wood, ext. 6976)

Note: This item was continued from the Governing Board Workshop on September 8th, 2010.

Chair Buermann recessed to Attorney Client Session at 12:05 p.m. He announced the meeting would reconvene at 1:30 p.m.

Chair Buermann reconvened the meeting at 1:44 p.m.

Sheryl Wood, General Counsel, reported no recommendations be taken by the Board on Agenda Item 55.

- 59.** Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009), to discuss strategy related to litigation expenditures and/or settlement negotiations in Black & Veatch Corp. v. South Florida Water Management District, Fifteenth Judicial Circuit, Palm Beach County, Case No. 2009-CA-31734 AH.

ATTENDEES: Governing Board Members S. Batchelor, E. Buermann, Joe Collins, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, G. Waldman; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, J. Nutt, F. Mendez, R. Panse, F. Bartolone and outside counsel B. Kirwin. (Sheryl G. Wood, ext. 6976)

Action Items (if any) Stemming from Attorney Client Session Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in Black & Veatch Corp. v. South Florida Water Management District, Fifteenth Judicial Circuit, Palm Beach County, Case No. 2009-CA-31734 AH.(Sheryl G. Wood, ext. 6976)

Sheryl Wood, General Counsel, reported no recommendation be taken by the Board on Agenda Item 59.

Adjournment

60. Adjourn

Chair Buermann adjourned the meeting at 4:05 p.m.

Eric Buermann
Governing Board Chairman
South Florida Water Management District Governing Board

Recorded By:

Cathy Widness
Administrative Assistant Senior
Governing Board and Executive Services
SFWMD

Motion made by Jerry Montgomery, seconded by Joe Collins to Approve the following item(s): 60
Vote called. Voting yes: Jerry Montgomery, Joe Collins, Sandy Batchelor, Eric Buermann, Charles Dauray, Shannon Estenoz, Kevin Powers, Glenn Waldman.
Motion passed.